THE NEW-YORK
CITY-HALL RECORDER.

VOL. II. *For December*, 1817. NO. 12.

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday*, the 1st day of *December*, in the year of our Lord one thousand eight hundred and seventeen—

PRESENT,

The Honourable
JACOB RADCLIFF, *Mayor*,
JOSIAH HEDDEN, *Special Justice*,
GEORGE B. THORP, *Alderman*,

HUGH MAXWELL, *District Attorney*,
JOHN W. WYMAN, *Clerk*.

GRAND JURORS.

EZRA WEEKS, *Foreman*.

NATH'L WEED,	WM. PATTERSON,
ELAM WILLIAMS,	CHARLES OAKLEY,
ROBERT TROUP, jun.	PETER NEVIUS,
THOMAS TOBIAS,	ISAAC MINARD,
GEORGE SHARP,	EDWARD LYDE,
JOHN SALISBURY,	EPHRAIM HART,
JOSHUA SECOR,	WM. SHOTWELL,
CHAS. OSBORN,	MORDECAI HOMAN,
ROBERT CENTER,	NOAH TALCOTT.

(LIBEL—WANT OF MALICE—NOTICE.)

MARTHA CODD'S CASE.

MAXWELL, GARDENIER & PRICE, *Counsel for the prosecution.*
EMMET & WILKINS, *Counsel for the defendant.*

———"Dux fœmina facti."
VIRGIL.
———"A woman leads the way."
DRYDEN.

The implication of malice, flowing from the publication of libellous matter, proved, or even admitted, to be untrue, may be rebutted or explained away by the defendant.

Where the *gravamen* in the indictment consisted in divers insinuations, conveying the idea that the prosecutor had conspired, with others, to incite one who had been produced as a witness on a former trial to commit perjury, and that the prosecutor was privy to certain secret conferences held between one of the conspirators, his client, and such witness, at the office of the prosecutor, though on the traverse of such indictment such insinuations may be proved unfounded, by the testimony on behalf of the prosecution, yet, should the jury believe, from the testimony on behalf of the defendant, and from all the circumstances in the case, that she had strong grounds for believing the information upon which such insinuations are founded, to be true at the time of the publication, the jury may acquit—especially where it appears that the subject-matter of such former trial was deeply interesting to the reputation and feelings of the defendant—a woman.

In such case, however, insinuations conveying so serious a charge, published against an individual, ought not to be founded on idle rumour, conjecture, or surmise; but the grounds should be such as to leave no rational doubt in the mind of the publisher.

The *quo animo*, or *intent*, with which a publication is made, rather than its *truth* or *falsehood*, is the correct criterion by which the jury is to determine whether such publication is a libel: if no *malicious intent* existed, *no libel* was published.

Quære—Whether a notice from the defendant to the district attorney, to produce, on the trial, a paper, supposed to be in the possession of the prosecutor, who has received a similar notice, but denies the existence of such paper, will be sufficient to authorize the defendant to prove the contents of such paper by parol testimony?

During the session of the court of Oyer and Terminer in this city in July last, the defendant was indicted for writing, publishing, and delivering to one William Coleman, editor of a public newspaper in the city of New-York, for printing and publication, a certain libel, of and concerning George Wilson, Peter Wilson, jun., and Charles Baldwin; they, the said George, Peter, and Charles, before and at the time of the said publication, being counsellors at law of the supreme court of judicature of the state of New-York, and solicitors and counsellors in the court of chancery, and the said Peter being a master in chancery. This indictment was sent down to be traversed in this court, and came on to be tried on Friday, the 14th day of November.

Maxwell opened the case to the jury, by stating that the prosecution was against Martha Bradstreet, for writing and publishing a certain false and malicious libel of and concerning George Wilson, Peter Wilson, jun., and Charles Baldwin, as solicitors and counsellors in the court of chancery of this state. The alleged li-

bel, with the introductory matter, the counsel then read to the jury, from the Evening Post of the 21st of June last.

NEW-YORK, JUNE 18, 1817.

To the Editor of the New-York Evening Post.

SIR,

I request the favour of your giving the enclosed letters insertion in your next paper.

The circumstances which have given rise to its necessity, are of a nature too important for an injured party to adopt a less public mode of communication.

My having affixed my signature at the close of the letter addressed to the Messrs. Wilsons, will satisfy you, I trust, that I shall readily meet any legal investigation of its contents, which they may think it prudent to resort to.

I am well aware, that from those whose interest or inclination it may suit, I stand exposed to the leaden shafts of illiberal remark for this novel attempt at female vindication, or rather infliction of a just vengeance on persons who have essayed all their malicious powers to embitter the future hours of my life, by depriving my children of every hope of future respectability, by the destruction of their mother's reputation.

You are to consider yourself at liberty to publish this letter, with those which accompany it, if you think proper ;

And I am, sir, your obedient servant,

MARTHA BRADSTREET,
Formerly Martha Codd.

To the Public.

In consequence of his intemperance and ill-treatment, I was compelled, in the year 1809, to separate from my husband, Mr. Matthew Codd: from that period until the year 1816, he resided in the southern states ; myself in the state of New-York ; where I have endeavoured to fulfil my duty as a mother, in the maintenance and education of his five children, and in prosecuting claims to a valuable property, which I am led to suppose are just.

A prospect of success in this latter pursuit of mine, prompted him to return, with a determination to assert a *fancied* right to a life estate in any property I might recover. For this purpose he applied to several civilians in this city, who, on inquiring into the character of the respective parties, declined engaging in his cause. Under these circumstances, he became the client of Mr. George Wilson, and I was compelled to resort to the court of chancery, to obtain a divorce ; a measure I had hitherto declined, although strongly urged to it by the advice of my friends.

A bill was accordingly filed in the court of chancery, on the 31st day of May, 1816, and the usual time for the defendant to answer having elapsed, an order was obtained to take it *pro confesso*, as the lawyers call it. Witnesses were examined before the master, John G. Bogert, Esq. and his report made up as to the criminality of the defendant ; but upon an affidavit sworn by George Wilson, stating, among other matter, that the default had been owing to his own indisposition and "incapacity to understand his client's ideas," his honour, the Chancellor, was pleased to grant the usual indulgence, and the defendant was permitted to answer.

At the expiration of nine weeks, an answer was filed. Upon application of my counsel for a feigned issue, it was opposed, on the ground that the material charge in the bill was not sufficiently specific, the defendant having previously sworn in his answer in utter denial of every such charge, and the oath having been received by Mr. Peter Wilson, as master in chancery!—His honour, the Chancellor, was pleased to direct, that my bill should be amended in that particular, by making the material charge more specific, which was accordingly done, when lo! his counsel thought it expedient to demur, as it is called, to the bill altogether ; that is, to admit the facts. I make no remarks on this, but leave it to be disposed of by the gentlemen of the profession.

At length, however, the Chancellor decided the point without an argument. A feigned issue was again applied for by my counsel and obtained, which was accordingly tried before his honour Judge Spencer, at the City-Hall of this city, on the 23d of April last, whose certificate of the result will speak for itself.

On this occasion a singular circumstance occurred: Isaac Sherman, formerly a soldier in the United States' army, belong-

ing to the company of Captain Arthur P. Haines, first regiment United States' light dragoons, was called as a witness for the defendant by one of his counsel, Mr. Baldwin, who did him the justice to introduce him as a man who "had lost his health, and the use of his speech, by wounds received, and hardships encountered in the service of his country, and as being the man who had taken General Proctor's horse;" when, to the great discomposure of that gentleman, who had so introduced him, this gallant soldier proved himself as *honest* as he was *brave*, by disclosing, in open court, a most nefarious conspiracy; stating, under oath, that an offer had been made to him by the client of Messrs. Baldwin and Wilsons of "a Thousand Dollars, on condition that he would swear to certain perjuries, for the purpose of invalidating the testimony of my material witness, and totally ruining my reputation," which statement he corroborated by producing a paper in the handwriting of the defendant, containing instructions upon which he was to shape his testimony, and which was identified by Thomas Addis Emmet, Esq. one of my witnesses. The consequences may easily be imagined, both upon the court and jury, and the counsel opposed to me. I think it but justice to declare, that until the evening previous to the eventful trial before Judge Spencer, when after much difficulty of search he had found me for the purpose of disclosing his knowledge of the plot, I never saw or heard of Isaac Sherman; but, in consequence of certain insinuations to the contrary, which, I understand, some of the opposite counsel continue to circulate, even since I have obtained my decree of divorce, and notwithstanding their client fled from the court, and absconded as soon as he was apprized of the nature of Sherman's testimony, which he gave when he happened to be out of court, I shall take public and effectual measures to substantiate this declaration, perfectly aware that I hereby offer them an opportunity to refute this charge, if untrue.

MARTHA BRADSTREET,
Formerly Martha Codd.

Greenwich, March 20, 1817.

A reconsideration of the advice of friends, and incidents which have occurred since the decree pronounced by his honour the Chancellor, have led me to lay before the public, documents which will tend to elucidate the nature of the circumstances which have given rise to the following correspondence: In the course of which, if indignation has led me into an appearance of acrimony, to the public I plead, in extenuation of it, the dreadful necessity to which I am driven to defeat the secret machinations of disappointed avarice, which have already, in various ways, attempted to injure the reputation of

MARTHA BRADSTREET,
Formerly Martha Codd.

Greenwich, June 17, 1817.

SUPREME COURT.

Martha Codd, Plaintiff, vs.
Matthew Codd, Defendant.

Feigned issue directed by the Court of Chancery of this State, by its order, dated the 28th day of February, 1817—tried on the 23d day of April, 1817, before his honour Judge Spencer, when the charge of Adultery was so fully established and proved, that the judge recapitulated the testimony, which the plaintiff's counsel had previously consented to submit to the jury, without remark; and the jury without leaving their seats found a verdict for the *plaintiff*; on which Judge Spencer has given the following certificate:

"I, Ambrose Spencer, one of the justices of the supreme court of judicature of the people of the State of New-York, and the judge before whom the issue above mentioned was tried, do certify, that no evidence of the confession of the defendant was received on trial of the said issue in maintenance thereof, and that the verdict in this cause was supported by proof without the confession of the party charged; and further, that the said verdict was satisfactory to me.

(Signed) AMBROSE SPENCER.

Dated Albany, the 27th day of May, 1817."

Greenwich, June 16th, 1817.

To Messrs. George Wilson and Peter Wilson, Attorneys at Law, and Masters in Chancery.

SIRS,

The irreparable injuries you contem-

plated effecting to my reputation, and the future welfare of my children, demand this public exposure of some of the insidious means you have resorted to for that purpose: I do not offer this remark otherwise than as an extenuation of my intrusion on the notice of the public, through the medium of the press.

Independent of frequent slanderous and malicious remarks on me, (a person at that time utterly unknown to you,) you have frequently so far forgot what was due to the character of the civilian, and the man, as to make me the subject of abusive invective in places of public resort; sheltering yourselves, no doubt, in your professional knowledge, that a married woman could not sustain a civil action for slander.—Be it so; but be assured, that the fancied security you hold, does not exempt you, on this occasion, from the contempt and censure of every gentleman of every profession; nor shall the acknowledged respectability of your father, or the high esteem and respect I am proud to own towards another near connexion of yours, restrain my maternal indignation from placing your conduct in its true light, before that public, from a jury of whom I have so lately obtained justice, notwithstanding your efforts as the champions of wrong.

In your idle, ignorant, and unprincipled associates, you have, no doubt, selected very proper channels for circulating slander and falsehood. Be it now my part, as the injured woman and the mother, to develope some share of them, under the sanction of such authority as you dare not contradict; and you shall prove my candour and temerity keep pace with each other. You fancied, no doubt, that to embellish the history of the hero of a very bad tale, might serve to dazzle the judgment, or enlist the passions, even of twelve honest jurors; at least, that it was worth while to try; and as you, Mr. George Wilson, profess yourself "to have a Head," you took unwearied pains to introduce an unfortunate client, whom your artifices had misguided, and upon whose depravity your avarice has set the seal, as a man who had "done the state some service."

At the Tammany-Hall, and in other places, you have ventured boldly to announce, that in consequence of his valorous achievements at the memorable battle of New-Orleans, under General Andrew Jackson, he was made a Colonel on the field.—Now, for the better information of that part of the public who may have been beguiled by this unprofitable fruit of Mr. George Wilson's "Head," I shall subjoin a correspondence* growing out of this fabrication, a fabrication which, however silly in appearance, was intended to aid other malicious schemes against me and my children; and I shall then leave you to the judgment of the public, which, however silently it falls, often leaves a deeper trace than more noisy torrents.

I take, however, this opportunity of informing those whom it may concern, from unquestionable testimony, that you, Mr. George Wilson, have declared, that the reason you withdrew the exercise of your talents on the trial before his honour Judge Spencer, on the 23d of April last, and substituted those of Mr. William Price, was, that you had discovered the villany of your client: and here, however immaterial the remark may be to Mr. Price, I cannot allow this opportunity to pass, without declaring, that I appreciate the honourable and gentlemanly manner in which he abandoned a cause he had been deluded into by misrepresentation. I will do your sagacity, sir, more justice in avowing the belief, that your real motive was, that you had just then learned, from undoubted authority, that barriers existed of an insurmountable nature, to prevent the execution of certain deeds of conveyance, intimately connected with your client's success in defeating my efforts for the preservation of my life, my reputation, and the welfare of my children.

For the fee he received, Mr. Charles

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* The correspondence here referred to, and which followed in the Evening Post immediately after the matter alleged as a libel, consists of a letter from John Bradstreet to General Jackson, bearing date May 3d, 1817, inquiring whether Matthew Codd was by the General made a Colonel on the field, "for his valorous exploits," in the engagement at New-Orleans? The reply of the General to this inquiry, bearing date at Nashville, the 26th of May, 1817, alleges, that he was not acquainted with any man by the name of Matthew Codd, during the war; nor with any circumstance, which occurred in the engagement, of the kind alluded to in the letter of Bradstreet.

Baldwin, I am informed, did all he could for your client, extending it to the forfeiture of the character of the gentleman in his address to the jury; for I am told, that a more indecent attempt at eloquence, in a bad cause, has not often insulted a court of justice. I understand you, Messrs. Wilsons, now complain, that your client has involved you in debt. I confess I am too candid, did I even believe your assertion, to affect to sympathize with you; but of this be assured, that there is a debt which he will amply pay you yet, in his dying execration, for having led him on to the total ruin of the last remnant of his reputation. I think it proper here to remind Mr. George Wilson, that his most material witness, Isaac Sherman, ("the soldier who took General Proctor's horse,") was well known to you some time before he gave public proof of incorruptible honesty, and that in your office in Nassau-street, frequent consultations took place between your client and Sherman, with your privity and consent. On this subject, the rest is left to the reader!!!

I will also refresh your memory, Mr. George Wilson, by reminding you, that the gentleman who has addressed General Jackson in the following letter, (the answer to which he only received on the 14th inst. and which is now submitted to the public,) is the same respecting whom you publicly observed, "that if you were in your client's place, you would shoot that Bradstreet." In addition to other vile and unfounded remarks, this was intended to publish your opinion of my criminality. I and my family have to rejoice in common with Mr. Bradstreet's wife and children, that however low you had prostrated your client's principles, he was not so easily prompted to murder as to perjury, and that I, notwithstanding detraction and persecution,

Am always myself,
MARTHA BRADSTREET,
Formerly Martha Codd.

The innuendo, immediately succeeding the matter addressed to the public, was, that the defendant meant thereby to insinuate and be understood, that the said George Wilson had conspired with the said Matthew Codd wickedly to instigate and persuade the said Isaac Sherman to swear to the certain perjuries aforesaid, for the purpose of invalidating the material witness of the said Martha, and for the purpose of totally ruining the reputation of the said Martha.

Under the matter in the communication to the Messrs. Wilsons, that "*he was not so easily prompted to murder as to perjury*," the meaning, as alleged in the innuendo, was, that the defendant thereby insinuated that the said George Wilson had prompted the said Matthew to commit murder and perjury; and, also, that the said George Wilson had prompted the said Matthew Codd to induce and persuade the said Isaac Sherman to swear to the perjuries aforesaid.

After reading the publication, Maxwell rested the prosecution.

Wilkins opened the defence, by stating the various circumstances on which the defendant relied.

Isaac Sherman, a witness on behalf of the defendant, was sworn, and stated, that in the beginning of April last, he was in the habit of going to Sternberg's Hotel, in Water-street, and became acquainted with Matthew Codd, then called Colonel Codd, who boarded there. In about a week after this, the witness, at the solicitation of Codd, went with him to the office of Messrs. Wilson and Gale, in Nassau-street, where Codd gave the witness an invitation of going with him to Eastchester; and told the witness to be in readiness at the office at a certain hour. The witness, the same day, met Dr. Jacob S. Arden, and Codd, in one chair, and Charles West in another, proceeding up the Bowery; and got in the carriage with West.

They proceeded five miles beyond Haerlem, when Codd complained that his horse was weary, and proposed to Arden that he should leave his chair and get in that of West, and that the witness should get in the chair with him, to lighten the load.

Codd then disclosed to the witness, that he should go the next morning to Mrs. Cannon's, and try to pump out of her what he could, and what he could not Codd would supply; offering, at the same time, to give the witness $1,000, and, if the cause was gained, more money.

They put up that night at the widow

Husted's, about nineteen miles from New-York; but about a quarter of a mile this side of the tavern, by a preconcert, the witness got out of the chair, having received sufficient in money for his night's reckoning, and proceeded behind, and came to Husted's Inn as a travelling man who wanted employ.

In the evening, Codd gave the witness written directions where to find Mrs. Cannon's; and the next morning he proceeded before, and soon after they followed behind. The witness, after travelling better than a mile, arrived at Cannon's, and found Mrs. Cannon and her husband; the former, being apparently sick, sitting in the corner with an infant. The witness asked for employ, and Cannon recommended him to a Mr. Munroe.

Shortly afterwards, Codd, West, and Arden, arrived; and West read a subpœna to Mrs. Cannon, who stated that she was unwell, and could not go. She ordered Codd to leave the house, or she would have him put in the State Prison. While there, they pretended not to know the witness.

After some further altercation, they all left the house; and the witness, lingering behind the rest, Arden called to him, "Ha! you man with a blue jacket, can you give me a chew of tobacco?" When the witness came up to Arden, he said, "You know I don't use tobacco, but I wanted to tell you to follow us."

They then went to the house of a Mr. Armstrong, where Codd gave the witness 14*s*., for stage fare to New-York, and a further sum of the same amount for other expenses. He was there directed to stay in the neighbourhood, that and the day following, and to watch an opportunity when Cannon should be absent, and try to find out what he could from his wife. He was then to return to New-York in the stage. At this place, the witness asked Codd how he was to pay his lawyer? and the answer was, that he had secured him with property.

The witness assented to the proposal of staying and performing what he was directed, and Codd and his companions departed. Shortly after this, the witness, instead of returning to Mrs. Cannon's, set out for New-York, and was overtaken by a wagoner, to whom he gave a dollar for his fare to the city.

Staying until the time he was expected by Codd, according to appointment, to be at Wilson's office, he went there and found him. Codd, being in the front office of Wilson, sent the witness with a letter to the post-office, and on his return handed him a set of instructions, in writing, concerning what he was to swear in court, and directed him to learn it by heart. These instructions Codd had commenced writing before the witness went on the errand aforesaid.

After this, there were frequent secret conferences between Codd and the witness, relating to this affair, in the back office of Wilson; sometimes when Wilson was in the front office, and sometimes when he was absent.

Sometimes Codd would ask permission of Wilson to let him go in the back office, who delivered him the key. In fact, all the communications the witness ever received on the subject, except as before stated, he received from Codd at this office; but Wilson was not present at any such conference, nor did the witness know that he had any knowledge of the nature of any such communication. Codd advised the witness to keep the expedition to Eastchester a profound secret.

The trial before Judge Spencer was to have taken place on the 19th, but was postponed to the 23d of April; a few days before which, George Wilson inquired of him if he was to be a witness? he answered in the affirmative; which was the only communication on the subject he ever had with Wilson, though he had known the witness several years before.

After having received the instructions and communications, as aforesaid, from Codd, he gave him another set shortly before the trial. The witness, on that occasion, came into court, and being requested by Mr. Baldwin, the counsel of Codd, to state what he knew relating to the case, said—"All I know is, that Colonel Codd has offered me $1,000 to swear to a lie!" Whereupon Mr. Baldwin rose, and said, "Mr. Sherman, I am surprised at your blowing up Colonel Codd in this manner." To whom the witness delibe-

rately replied—" Sir, I do not—I only furnish the magazine, and leave it to the court to blow him up!" At the same time, the witness delivered to Judge Spencer the set of instructions last received from Codd, and in his handwriting!

We have thus preserved the thread of the witness's narrative, which, during its relation, was interrupted by frequent appeals to the court against its admissibility.

It was contended, by Messrs. Price and Gardenier, that the story of this witness ought not to be received, unless it was further shown, on behalf of the defendant, that the Wilsons had cognizance of the transaction.

His honour the Mayor said, that, as he understood, from the bearing of the testimony, there were two things which the defendant proposed showing: 1st, That there was a conspiracy to induce Isaac Sherman to commit perjury on a former trial; and, 2dly, To show a connexion between the conspirators and the Wilsons. Unless this were shown in the course of the trial, the story of Sherman would go for nothing.

Emmet, in frequent remarks to the court, in answer to the objections made to Sherman's testimony, stated, that it was the object of the defendant to show a conspiracy to suborn Sherman; that this was to be made out by direct testimony or circumstances. He cautioned the opposite counsel, and urged them to suffer the prosecution to take its proper course. He was extremely cautious of anticipating or stating matter of supposition; but if compelled to the measure, he should, after proving this conspiracy, give the declarations of some or one of the conspirators in evidence to the jury, to charge the others.

For the present, it was only necessary for him to state, that he expected to show a palpable connexion between these conspirators and the Wilsons. He should urge to the jury, that, from the relation necessarily subsisting between client and counsel, it could not be otherwise but that one, at least, of the Wilsons had a perfect knowledge of the communications between Codd and Sherman.

The witness, on his cross-examination, which was conducted principally by Price, stated that he had never declared to any person that he did not believe that Wilson or Dr. Arden had any thing to do with this affair; but he had stated on the former trial, and before the grand jury, and he now states, that he did not know, of his personal knowledge, that they, or either of them, was, or were concerned. Wilson was never present at any conference between Codd and the witness. A day or two before the trial took place, a quarrel happened at the office between Wilson and Codd, when the former told his little boy to kick Codd out of the office, and called him a rascal.

Question by Mr. Levy, one of the Jurors. Was Wilson's office always the place appointed to meet Codd?

Witness. It was.

Question by Emmet. Did you ever hear Wilson tell any thing concerning the advantage he should derive, if Codd gained his cause?

Witness. After this quarrel, they both came in the front office and made up; and Wilson said, that if Codd gained his cause, he, Wilson, would never want for money. This was before we went to Eastchester.

Mr. Price. To whom did you first communicate the offer you had received from Codd of $1,000?

Witness. To John Lyon and John G. Scholtz. This was about a week before the trial: they were officers, with whom I had been acquainted in the army. Lieutenant Scholtz, when I first disclosed it to him, treated it as an idle thing; but the next time I told him, he advised me to lose no time in finding the lady, or her counsel, and giving them a full relation of the affair, and not to state any thing under oath but the truth.

From this time, until the trial, the witness stated, that he made inquiries in many places to find the defendant or her counsel. He inquired of Codd, who informed him that she lived in Westchester.

The day before the trial was to have taken place, the witness ascertained, by accident, that Mr. Emmet and Colonel Burr were her counsel; when he called on a young man, in the office of the first-named gentleman, and urged him to have the trial put off till the witness could see Mrs. Codd, for he had something very important to communicate.

The witness further testified, that he showed the written instructions he had received to Scholtz; and not being able to hear any thing concerning Mrs. Codd, he destroyed the paper, being determined to have nothing to do with the affair. A short time, however, before the trial, Codd delivered him another set of instructions, which he first showed to Colonel Burr, and delivered to Judge Spencer, as before related.

Price. What business have you lately been engaged in?

Witness. I have done the business of a gentleman, for two or three months.

Price. Have you received any sum or sums of money lately?

Witness. Yes, Sir; I have lately received $200 from government towards my pension.

Price. Have you received none from any other source?

Witness. I received $3 50 from Mrs. Codd.

Price. For what purpose, and on what account?

Witness. For wheeling three pigs from market up to her house in Greenwich.

Price. This, surely, could not have taken more than three hours?

Witness. One of the pigs got out of the bag, and it took me as much as three hours to catch it.

Charles West, on being sworn as a witness on behalf of the defendant, testified, that he was acquainted with Codd, and had been in Wilson's office when he, Codd, was there.

To an inquiry by the Counsel, whether he had ever heard George Wilson say any thing derogatory to the character of the defendant, he answered, that he had heard Wilson say, that her proceedings were unjust against Codd; and at other times, and in various conversations, the particulars of which the witness did not recollect, Wilson conveyed an idea to the mind of the witness, that she had an improper connexion with Mr. Bradstreet.

The evening before Wilson went to Albany, to argue the demurrer to the bill in chancery, Codd borrowed $50 of the witness, which he paid to Wilson, who told Codd, that if he minded his business, it would be well. At another time Wilson said, in the presence of the witness, that if Codd succeeded, $700,000 would fall to him.

Emmet. Do you know any thing concerning a certain deed of conveyance of a life estate from Codd to the Wilsons, or either of them?

Witness. I do not.

The counsel then stated, that a notice had been served on George Wilson, to produce, on the trial, a certain bond and warrant of attorney from Codd to him, intended to secure to Wilson the life estate of Codd in certain property; that a notice had also been served on Peter Wilson, jun., to produce a certain conveyance of the life estate of Codd to him to certain property, which notices were accompanied by a subpœna *duces tecum* to each of the Wilsons. A similar notice had, also, been served on Mr. Maxwell, the District Attorney.

The service of the notices being admitted, Emmet contended, that, upon their nonproduction, the defendant had a right to go into parol evidence to prove their contents, without calling on either of the Wilsons as witnesses. The district attorney, standing in the place of the prosecutor, is presumed to have either possession of, or control over, papers relating to the interests of those he represents. Though the counsel could not cite the court an authority, his impression was, that such was the rule in the criminal courts in England.

Gardenier contended, that the notice served on the district attorney, to produce a paper in possession of the prosecutor, was inoperative, and did not pave the way to secondary proof. The opposite party was first bound to show that the district attorney, who stands, on all occasions, as the representative of the people, had the paper, before he could be called upon for its production; or the Wilsons may be called on as witnesses for the defendant; and they would state that no such papers, to their knowledge, existed.

The court was disposed, at least for the present, to waive deciding the point. It was entirely new; and, perhaps, not necessary to be decided at that stage of the prosecution.

Emmet waived the inquiry, and the cause proceeded.

George Griffin, a solicitor and counsel-

lor in chancery, on being called on as a witness on behalf of the defendant, stated, that he had been applied to by Matthew Codd to defend the suit in chancery; and the witness expressed a reluctance at being further examined, as he did not know that it would be proper for him to go into a further detail.

By the Court. Was you the counsel of Mr. Codd?

Witness. I was not. I declined being his counsel; but this was conditional. If deemed expedient, I will state the reason. Codd applied to me, and related his story; and finding it was likely to lead to an extensive range of business, and that the controversy was with a lady, having several children, I told him that I should expect, if he engaged me, a retainer of $100. I purposely set the charge high, thinking it would put an end to the application. He did not comply with the terms, and without having passed any judgment on the merits, we parted.

Caleb S. Riggs, also a counsellor in chancery, on being sworn as a witness on behalf of the defendant, testified, that Codd applied to him to defend the suit commenced by the defendant, and told his story; the hearing of which, was the only concern the witness had in the cause. He asked a sum for a retainer, which Codd either would not, or could not pay, and the witness, of course, was not engaged.

Henry York Webb, a witness for the defendant, testified, that in October, 1816, having some business to transact in Wilson's office, some conversation passed between that gentleman and himself on the subject of the divorce. Wilson said, among other things, "Damn that Bradstreet, if I was in Codd's place, I would shoot him." He further stated, as a reason, that Bradstreet was continually gallanting her about; and it looked more like the conduct of a sweetheart than that of a relation. At this time Wilson knew that the witness was acquainted with the defendant.

On being requested by the counsel for the prosecution to point out George Wilson in the bar, the witness pointed out Peter W. Gale, Wilson's former partner.

John Bradstreet, a witness for the defendant, on being sworn, testified, that the intelligence concerning the declaration of Wilson, mentioned by the last-named witness, was conveyed to her as coming from George Wilson.

Charles West was here called again, and stated that he understood, previous to the trial before Judge Spencer, that he was to be a witness for Codd; but was not examined by Wilson beforehand.

John G. Scholtz, a witness on behalf of the defendant, stated, that he was a lieutenant in the army during the late war, and that Sherman, in the spring of 1816, called on him, and disclosed the offer made to him by Codd, and exhibited to him a paper, the contents of which he does not recollect. The witness first treated it as an idle story; but upon a further application from Sherman, the witness directed him to find out Mrs. Codd, or her attorney, and disclose the whole affair.

In the month of January preceding, the witness boarded at Sternberg's Hotel, and Codd, then called Colonel Codd, boarded there at the same time. Sherman attended there, frequently, in the capacity of a waiter, to both Codd and the witness. He saw Sherman frequently in Wilson's office; and understood the former had employed the latter to draw up certain papers for the purpose of getting a pension. About a week previous to the trial, Sherman stated to the witness this affair concerning the offer.

Dudley S. Bradstreet, on being sworn for the defendant, stated, that he was introduced, by some person at Tammany Hall, to a man then stated to be Colonel Codd, who had performed great exploits under General Jackson. The witness is acquainted with both the Wilsons; but is uncertain whether the person so introducing Codd was either.

John Bradstreet was again called, and asked, by Emmet, whether he did not understand, by the witness last named, that he was introduced by Wilson to Codd as one who, for his valorous exploits under General Jackson, was made a colonel on the field, and whether he did not, a short time afterwards, so inform the defendant?

Gardenier objected to this inquiry, on the ground that it was mere hearsay testimony.

Emmet insisted to the court, that, as this was charged in the indictment, it was

competent for the defendant to show that she received and acted upon such information. This, if proved, was a circumstance to show the want of malice.

The court, on that ground, overruled the objection, and the witness answered the inquiry in the affirmative.

John W. Picket, on being sworn for the defendant, testified, that he heard the same account of Codd, in Wilson's office, as stated by the last witness; but he does not recollect whether Wilson was present when such account was given.

Mary Tuttle, a witness for the defendant, testified, that she was examined by Peter Wilson, jun., about a fortnight before the trial of the feigned issue, to ascertain what she would swear; and that, on that trial, she was sworn as a witness on behalf of Codd.

Robert Emmet, a witness for the defendant, testified, that he spoke to George Wilson several times, and Wilson to him, on the subject of the controversy between Mrs. Codd and her husband. The witness had given Wilson to understand that he, the witness, was a particular friend of this woman, and, on one occasion, cautioned or requested him to say nothing derogatory to her character. In the course, however, of some or one of these conversations, Wilson spoke disrespectfully of the character of Mrs. Codd, and conveyed an idea to the mind of the witness, that an improper intimacy subsisted between Bradstreet and the defendant; though the witness could not undertake to repeat the words by which that idea was conveyed. The witness does recollect, however, that Wilson said it was very strange she and Bradstreet should be so often walking together.

After the trial of the feigned issue, the witness had a conversation with Wilson, wherein he endeavoured to remove any unfavourable impression on the mind of the witness, which he might have towards Wilson, touching his knowledge of the attempt to suborn Sherman. Wilson told the witness that he did not know, before the trial, that Sherman was to be examined as a witness, and did not know what he would swear. Wilson, in the course of the conversation, further said, that the reason he wanted the trial put off was, that he had found out that Sherman was a great rascal.

Price, after reading that part in the publication relating to Mr. Baldwin, inquired of the witness, whether, on the trial of the feigned issue, that gentleman stated any thing indecent in his address to the jury?

Emmet, the counsel, requested to know whether Price appeared as the counsel of Mr. Baldwin?

Price replied, that he appeared for the people.

Emmet objected to the inquiry, on the ground, as he alleged, that Mr. Baldwin's name had been joined with the others without his knowledge or concurrence. He had never appeared as a prosecutor; and wished to have nothing to do with the affair. If the gentleman, however, persisted in the inquiry, the counsel should be compelled, contrary to his feelings, to prove the precise words uttered by Mr. Baldwin, alleged to be indecent, in his address to the jury.

Maxwell stated, that although Mr. Baldwin had, on no occasion, appeared as a prosecutor, yet, the complaint relating to him was incorporated in the indictment, and was regularly before the court. The counsel did not feel himself authorized, nor was he aware, that he had the power of withdrawing any part of the indictment.

By the Court. We think it is competent for the public prosecutor to withdraw any part of the charges contained in the indictment, at any stage of the cause, should he think proper.

The counsel for the prosecution, however, refused to withdraw that part of the indictment concerning Mr. Baldwin, and Emmet, thereupon, called on John Bradstreet, who testified concerning certain expressions, considered indecent by the witness, which were used by Mr. Baldwin in his address to the jury on the feigned issue.

From the testimony of this witness, it appeared that the expressions used referred to Mrs. Cannon, a witness sworn on behalf of the plaintiff, on the trial of the feigned issue; but we deem the words testified to immaterial.

John M'Kesson, Clerk of the Sittings, on being sworn as a witness for the defend-

ant, was asked, by Emmet, whether he had an affidavit, in the handwriting of George Wilson, sworn to before the witness by Codd, for the purpose of putting off the trial of the feigned issue, for the want of a material witness? The witness answered in the affirmative, and further stated, that the affidavit was sworn in open court, on the 14th day of April last, and Wilson made the motion as counsel.

Price objected to the introduction of the affidavit in evidence, unless the counsel, also, would show that it was false, with the knowledge of Wilson.

Emmet stated, that he proposed to show that when this affidavit was first read before the court, Judge Spencer decided that it was defective. Wilson altered it again, and it was sworn to, and still found defective; and when Wilson was about making the third alteration, the Judge rebuked him, by saying, "Sir, will your client swear to every thing you write?"

Thus was this affidavit altered three times, successively, without once consulting the client.

By the Court. But the court, nevertheless, still received and acted upon the affidavit?

Emmet. The trial was put off on that affidavit.

By the Court. We think you ought to bring the falsity of this affidavit home to the knowledge of Wilson, before you proceed further with this evidence.

Francis Arden, a witness on behalf of the defendant, on being sworn, testified, that he was a master in chancery, and saw the answer of Codd to the bill in chancery for a divorce. The witness was applied to by him to administer the oath, subjoined to the answer, of its truth; and was informed, by the witness, that such oath was not necessary; which was one reason why he declined administering it. Another reason was, the witness believed, from the relation given by Codd himself, and for other reasons, that the answer was false.

Before the trial, the witness gave his opinion to the Wilsons of Codd's delinquency, in very explicit language.

In the opinion of the witness, the Wilsons were imposed on by Codd. George Wilson is a man of very sanguine feelings and temperament: he had, no doubt, imbibed very strong prejudices against Mrs. Codd, from the relation given by her husband, and expressed himself with warmth. But, after an acquaintance with George Wilson for a great number of years, the witness did not believe he had a bad heart.

Emmet. Do you think it proper, or becoming a counsellor, to suffer a client to closet a man in the back office from time to time?

Witness. I consider it extremely indiscreet; and I should not suffer it to be done.

Emmet here called up Isaac Sherman. (*To the witness.*) Have you ever heard George Wilson call in question Matthew Codd's truth and veracity?

Witness. Codd told a story about his being attacked, at or near New-Orleans, by monstrous alligators, and that he had no other way to manage them but by gouging out their eyes!!! I have heard Wilson ridicule Codd, when absent, about the alligator-story, and say he was a great liar.

Charles Holt, a witness on behalf of the prosecution, testified, that he was a member of the grand jury, in May last, when the defendant instituted a complaint against George Wilson, Peter Wilson, jun., Peter W. Gale, John S. Arden, Charles West, and others, for conspiring together to suborn Isaac Sherman to commit perjury on the trial of a feigned issue before Judge Spencer. She appeared herself as the prosecutor, and produced papers and witnesses. The complaint was on Tuesday, the 6th of May, when an indictment was found against Matthew Codd, and dismissed as against the rest.

Sherman was sent for as a witness, by the suggestion of the prosecutor, and was asked, particularly, at what time, and on what occasion, the set of instructions was delivered to him by Codd? In answer to that inquiry, he said, that the paper was delivered to him on the road to Eastchester, when in a chair, or gig, with Codd, under an injunction of secrecy to disclose it to no person, especially to Wilson. He said, further, that three chairs went on the expedition; and that on the way, Codd, who rode with another, proposed, as his companion was a large man, that he should get in the carriage with the person riding with Sherman, and that he should come in that in which Codd rode.

Sherman was asked, by the grand jury, (and the question was varied,) whether he had any reason to believe, that George Wilson had any knowledge of the transaction prior to its disclosure in court? His answer was, that he did not believe Wilson had such knowledge. The witness is confident that Sherman stated to the grand jury, that the paper was handed to him by Codd on the road, who instructed him what to say.

This witness, during his examination, for the purpose of refreshing his memory, frequently recurred to certain minutes taken by him while on the inquest.

John Coffin, jun., a witness for the prosecution, testified, that he was also a member of the grand jury; and that Sherman was asked by him how George Wilson was implicated in that affair? and the question was repeated. Sherman answered, "I do not know he was, nor do I mean to implicate him: but," said he, "I remember one circumstance," and he then gave an account of a quarrel, in Wilson's office, between him and Codd, in which he was turned out. The witness thinks Sherman further said, that he had frequent private conferences with Codd in that office.

Peter Wilson, jun., a witness for the prosecution, stated, that he was a master in chancery, and at the request of his brother, who was unwell, went to a Mrs. Haight's, in Park-Place, and took the examination of Mary Tuttle, who was to be introduced as a witness on the trial of the feigned issue. Codd was a person of that description, that it was impossible to learn from him the statement of his case.

The witness had no knowledge whatsoever of any deed of conveyance of the life-estate of Codd in any property to the witness. A short time before the trial, the witness was spoken to by Codd about entering up a judgment on a bond executed to his brother, in Philadelphia; and the witness consulted with his brother, George Wilson, on the subject, who said it would be an improper thing, and so advised the client.

The witness, on his cross-examination, stated, that he did not know of any security received from Codd by his brother; but had heard that he received $50.

On the production of the paper spoken of by this witness, it appeared to be an assignment of Matthew Codd of a life-estate, in certain property, to Patrick Codd.

Charles Holt, on being again called, stated, that he did not recollect whether Sherman swore, before the grand jury, that he was frequently locked up in Wilson's office, and that Codd delivered him the instructions there.

John Wood, a witness for the prosecution, testified, that he was on the grand jury when Sherman was examined, and he said nothing there which could implicate the Wilsons, further than that he was at the office frequently with Codd.

George Wilson, a witness on behalf of the prosecution, testified, in substance, as follows:

I have been subpœnaed here, on behalf of the defendant, with a *duces tecum*, to produce a certain bond and warrant of attorney, securing to me the interest and property of Matthew Codd in a life-estate: I have no such instruments, nor any knowledge concerning them. I remember he applied to me to enter up a judgment on a bond to Patrick Codd, of Philadelphia, and I saw a letter authorizing the entry of such judgment; but I refused, and advised Codd against the measure. I have taken no security whatsoever from him.

I had not even the most remote knowledge that Codd intended to suborn Sherman.

Emmet. Mr. Wilson, do you remember ever having said any thing disreputable to the character of the defendant?

Witness. From the relation given me by the husband, I had, certainly, imbibed strong prejudices against Mrs. Codd. I have, on various occasions, expressed myself with warmth on the subject. I have said that I did not consider it seemly or decorous for her to be gallanted about by Mr. Bradstreet, while she was seeking a divorce from her husband. I said this to Mr. Robert Emmet, in a friendly manner, while holding an argument with him. He said that Bradstreet was a relation: to which, I replied that I did not think it was necessary for them to reside together: and I mentioned this, too, as coming from Codd.

Emmet. Do you recollect a conversa-

tion you had with a Mr. Russel on this subject, at the Mansion-House, in Albany?

Witness. I remember of having a conversation at Albany, but not its substance.

The first time I heard that Sherman was to be a witness was the morning of the trial. He was at the office frequently, as I understood, to get some papers made out to apply to government for a pension. Codd was also there; and they were often out and in, until I was perfectly tired of it, and so told Mr. Gale.

I engaged Mr. Price, at his office, during the winter, to try the cause with me; but do not recollect that I instructed him in the merits.

Emmet. Mr. Wilson, do you know, or have you any reason to believe, that any deed or security was executed by Codd to any person in trust for you?

Witness. I do not know, nor have I any reason to believe so.

The night before the trial, Peter, my brother, came to me while sick in bed, and told me that Codd was a great rascal; that he had but just left him at his house, intoxicated, and said if he had $1,000, he could easily carry his cause.

After I became retained for Codd, and while in the progress of the business, I received several anonymous letters—some soothing, some flattering, and some threatening. I felt that I had an enemy at every elbow. When the grand jury met, before whom a complaint was made against myself, with others, for a conspiracy, I was solicited, by many persons, to send a statement of facts before them. This I disdained doing; but, at the request of my father, I sent a short note to the grand jury, requesting them not to act hastily.

Afterwards, when the complaint was made against the defendant for a libel, two anonymous letters, one to Baldwin and one to myself, were sent in, by my counsel, to the grand jury, as I understood.

The witness never had a quarrel with Codd and turned him out of the office; but it was impossible to understand his statement. The witness frequently called on him for a list of his witnesses, which he never produced.

Peter W. Gale, a witness for the prosecution, stated, that he was a partner of George Wilson at the time he was engaged for Codd. The witness does not know concerning any secret conference between Codd and Sherman.

He was then about applying for a pension, on account of being wounded, and was at the office frequently; and, as the witness conceived, on business relating to that affair. He had no reason to believe, nor did he believe, that Wilson had any knowledge of the attempt to suborn Sherman; nor does he think that Wilson knew that Sherman was to be a witness until the day of the trial.

Emmet. Were they not in the office frequently?

Witness. They were; but I thought it was on another affair. Wilson often told me he was tired of having those persons in the office. He often called on Codd for his list of witnesses, which, at the time of issuing the subpœna, was not furnished, and blanks were left for their names.

When Sherman testified before Judge Spencer, I was present, and was much surprised. The Judge seemed very desirous of knowing from him what persons were concerned. Sherman said that Dr. Arden had no knowledge of the attempt to suborn, nor did he believe that any other person knew except Codd.

Robert Bogardus, a witness for the prosecution, testified, that he had known George Wilson fifteen years, and his brother Peter ten, and that their private and professional character was good.

Previous to the time of the publication in question, the witness had never heard any thing against the private or professional conduct of George Wilson; but, about the time this took place, rumours were in circulation against him, and the witness was afraid Wilson had not done altogether right.

He has a good heart; and the witness, having been long acquainted with him, never suspected him of having a bad heart. He is a man of very sanguine feelings, and zealous in whatever he undertakes; but, if he has any failing, it is that of being too free and obliging for his own interest.

John Ferguson, one of the former mayors of New-York, on being sworn, testified, that he had been acquainted with George Wilson, and Peter Wilson, jun.,

several years, they having practised under him while mayor, and that nothing could be alleged against their private and professional character.

De Witt Clinton, one of the former mayors of this city, now the governor of this state, on being sworn as a witness on behalf of the prosecution, stated, that he had been acquainted with George Wilson eight or ten years; that he practised under him, and that he ever conceived him to be a very honest and honourable man. His private and professional character was unquestionable; and the witness would place the fullest reliance on his oath. The character of Peter Wilson, jun., was also good.

Josiah Ogden Hoffman, one of the former recorders of this city, on being sworn, concurred with the two last-named witnesses in the character given of the Wilsons. He further stated, that George Wilson entered the office of the witness, as a student, in 1802, and that he always had the fullest confidence in him.

James L. Bell, the sheriff, Sylvanus Miller, the surrogate, of the city and county of New-York, and Jacob Warner, one of the police magistrates, and John T. Irving, counsellor at law, on being sworn, as witnesses for the prosecution, all concurred in showing the private and professional character of the Wilsons to be perfectly good. These witnesses stated, that they spoke from an acquaintance of several years, and from having had dealings, in their several official capacities, with the Wilsons.

Sherman, on being again called, testified, that he stated to the grand jury, that, on the road, Codd gave him a paper containing directions where to find Mrs. Cannon, and that he did not swear that he received the instructions on the road. He is confident Wilson was informed, by him, that he was to be a witness, three or four days before the trial.

It was proved, by Benjamin Hart and John Graham, officers in the army during the late war, who were acquainted with Sherman while a soldier, that his character, while in that capacity, was excellent; and that his officers placed the utmost confidence in him. His speech was injured, by reason of his wounds, which led some to think he was subject to intoxication, until explained; which never was the case with him; for he was very temperate. Graham had known him fifteen or sixteen years, and had never heard his veracity questioned.

The other testimony for and against the character of this witness we consider about balanced, and shall omit it on both sides of the equation, as its insertion will not aid the final solution, which, no doubt, the patient reader wishes.

Here the testimony, on both sides, closed.

Wilkins summed up the case to the jury in a speech of some length, wherein he stated, that it was not his intention, in this case, to insist that the Wilsons were guilty of being concerned in the attempt to suborn Sherman; this was not necessary for his argument. But he should insist, from a variety of facts detailed in the testimony, that the defendant had the strongest grounds for believing one of them to be concerned.

In the first place, George Wilson was the attorney of Codd, and is presumable to have known the grounds of his client's case.

In the second place, Mrs. Codd attended the trial of the feigned issue, and heard the testimony of Sherman. She heard him say, as he has sworn this day, that all the communications which Codd had with Sherman transpired at Wilson's office. And was there any thing which ever happened, more nefarious—more abominable than the plan of going to Eastchester with Sherman to see Mrs. Cannon, for the purpose of giving a colour to a statement of facts to be related by Sherman which was utterly false?

The counsel contended, that, from what Sherman had stated, under oath, and from every circumstance, the defendant had the strongest grounds for believing that Wilson must have known of this attempt. And yet, strange to tell, it has been proved, on this occasion, that Wilson did not know, until the night before the trial, that Sherman was even to be a witness.

The subject-matter of the former trial was highly interesting to the feelings and reputation of the defendant—her all was at stake—for, if Codd had obtained his purpose, by defeating a recovery, he

would have been entitled to the use of the third of her property during his life.

But that Wilson aspersed her character, on various occasions, in a manner calculated to do her the greatest injury, is abundantly established, and even admitted. It is true Mr. Webb was mistaken in the person, but the language was conveyed to the defendant as coming from Wilson, and was actually uttered in his office.

The counsel urged to the jury, that Wilson himself was the cause of this publication, by giving currency to unfounded insinuations against a lady who, from the peculiar situation in which she then stood, was unable to vindicate her wrongs, or assert her innocence in any other mode.

Should the jury, therefore, be convinced that she had strong reasons to believe the knowledge of Wilson in this attempt to suborn Sherman, though at the same time they may think she acted under a mistake, it will be their duty to acquit.

Emmet, in his address to the jury, remarked, that it was not for the purpose of judging concerning civil rights, or awarding damages, that the jurors were impanelled; they came into this court to *punish crime*. I admit, said he, that if, instead of instituting a criminal prosecution for this publication, the Messrs. Wilsons had resorted to a civil action, and that was now the subject of consideration, you would have a different question to determine: for, in a civil action for a libel, nothing but the truth can be received as a justification. But in the mode which the gentlemen have adopted, they have put it to the jury to try—to investigate, and to scrutinize the *intention*.

I assume this as the basis of my argument, and am ready to meet them on the ground they have chosen. I shall demonstrate to the jury, that the defendant is to be acquitted from any criminality of intention in this publication.

I must confess to you, gentlemen, that before this investigation had taken place, I much regretted, and was grieved at the delinquency of one who, in my estimation, until his unfortunate retainer in the business against the defendant, was in very respectable standing in an honourable profession. I had a stronger reason for being grieved, because he was an intimate relation of my former friend and partner. That this prosecutor should so far have deviated from the path of rectitude prescribed by the precept and example of a truly venerable father—that he should so far have lost sight of the dignified morality upon which our profession is founded, as to have countenanced, for a moment, or even winked at, so daring and nefarious a conspiracy as has been proved before you, I must say, gave me many painful emotions. This investigation has removed those unfavourable impressions from my mind; and it is a subject of peculiar satisfaction to me, that while asserting, before you, the purity of the motives which actuated my client in this publication, I am not compelled to arraign the motives of the gentlemen who instituted the prosecution.

My client was the mother of a family of five children, whose welfare and future prospects were involved in the fame of that parent. Her daughters were just rising in life, and they looked up to the mother as their only guardian and protector. Yet the reputation of that mother was aspersed; and insinuations circulated which were calculated to inflict the most serious injury on her character. She could not appeal to the laws of her country for redress, for a married woman cannot sustain an action for such wrongs. The weakness of her sex forbid the infliction of a just chastisement on the authors of her sufferings.

In her rising family, so estimable, so dear to the parent, all her future hopes and fond anticipations were centred. She beheld her progeny with maternal tenderness, embittered with the poignant reflection that her own reputation, so important to them, was assailed and made the subject of obloquy and reproach. With such feelings, what must have been her situation? You alone, who are fathers, can conceive; and, yet, your ideas must necessarily be inadequate; for such feelings enter none but the mother's bosom. Her object was to retrieve a character attempted to be sullied, and to rescue her fame from the foul touch of calumny; and I rejoice that an opportunity is afforded. She has provoked this investigation, and she calls on a jury duly to appreciate and scan her motives.

Did this publication originate from unfounded suspicions, or idle rumour, or conjecture? You have seen that two gentlemen of the profession had been applied to, and they declined being retained by Codd. This information she received; and it was natural for her to believe and to reason in the mode disclosed in the publication. The client, also, was poor; and what prospect had the counsel for remuneration for his services?

Receiving information, also, as we have seen, that Wilson had said, that he would never want for money if Codd gained his cause, her suspicions were awakened, and she had a right to believe that the counsel was actuated by avaricious motives.

Couple with this the relation made by Sherman, which we have heard, and can we hesitate in saying, that her reasons for belief were strong and irresistible? It was not from the information of Sherman, merely, that she acted: she had seen him, in open court, exhibit the set of instructions received from Codd, and swear that he had refused the bribe of $1,000. All the communications he had received, touching this offer, took place, in secret conferences, in Wilson's office. The client, it appears, had access to every part. Could any one have supposed, therefore, that Wilson did not know it? Should he, ought he not to have known this? Standing in the relation of counsel, in an important controversy—a controversy which involved the future fortunes of his client, was it not the duty of that counsel to examine, inquire into, and thoroughly understand his client's case? Should *he* not know what one of the most important witnesses his client had was about to testify? Above all, ought he to have suffered secret conferences to have taken place in his back office, the purport of which he did not know? His friend, Mr. Arden, in his testimony, has given him a salutary caution on this point, which, I hope, he will never forget.

Gentlemen—I assume this as the train of reasoning in the mind of my client, upon which her conclusions were founded. And I appeal to you, whether, standing in her situation, you would not have believed as she did, and been prompted to act as she did? For, is it conceivable—is it within the range of possibilities, that Wilson should not have ascertained what all the witnesses would say; especially when the client was so stupid as not to be able to impart to his counsel his ideas concerning his own case? And yet, wonderful to relate, it has been proved, beyond a contradiction, that Wilson did not know, until the day of the trial, that Sherman was to be a witness!

It was necessary that a transaction so involved in mystery—so strange—so unaccountable, should be explained by the positive testimony of the parties: and it was necessary for a public investigation, to rescue the fame of my client from obloquy and reproach. That the gentlemen have thus explained—that they have cleared their character from a just suspicion, I rejoice: it was but a mistake on her part, and I am willing to consider it in that light.

Price. Mr. Emmet—If your client will acknowledge this in writing, we will immediately withdraw the prosecution.

Emmet. We shall sign no statement or acknowledgment in writing: we put our case to the jury as it stands, and shall call on them for an honourable acquittal. The many aspersions cast on the character of my client, the many unfounded insinuations propagated to her prejudice, lead her proudly to reject all propositions for a compromise, and to repose on the intelligence and discretion of a jury.

For some reason, which I am unable to explain, the name of Mr. Baldwin has been joined with that of the Wilsons in this indictment. That gentleman mentioned to me that he never appeared as a prosecutor, nor did he wish that his name should be called in question. He even went before the grand jury and requested that his name should not be used in this prosecution.

Gentlemen—On this occasion, you are not called upon to try the Wilsons; and, for the purposes of this trial, much of the testimony of character, which I am happy to find so ample and satisfactory, might have been omitted. You are to determine a pure question of intention—you are to decide whether the defendant has made this publication with malicious motives.

If you think that she had abundant reason for believing the facts detailed before

you in the testimony—if you, placed in her situation, could not but have credited them yourselves—if, in short, under all these circumstances, you consider that she acted as became the mother, solicitous for the honour and future welfare of her family, you must acquit. For again I beg you to bear in mind, that you are to render a verdict, without regard to any supposed consequences affecting the feelings or character of the prosecutors. The defendant, on her part, conscious of the purity of her intentions, is anxious of retiring to the bosom of her family, with the innocence of her motives sanctioned by your verdict. But if, under all the circumstances, you cannot avoid the conclusion of her guilt—if you cannot entertain a doubt but that she was actuated by malicious intentions, however painful to her feelings, she must submit to your decision. But she implores you to weigh well the circumstances of her case before you pronounce—to consider her peculiar situation under the unmanly aspersions cast on her reputation—and, with the many powerful reasons with which she was actuated, in your view, to inquire and put it to yourselves, whether such a situation and such reasons would not, on your part, have produced a correspondent action?

Price said that his fears for the result of this trial were already almost realized. He knew the justice of the complainant's cause—he was convinced of the integrity of their conduct—but he felt that the defendant came into her defence with advantages against which it was almost impossible to contend. Her sex—the accomplishments with which she had graced it, and her personal presence through a long and tedious trial, were among the allurements with which justice had been tempted to connive at her acquittal. She had, also, brought in aid of her cause as learned and eloquent an advocate as this or any other country could produce.

If, therefore, the means of which she is fortunately possessed, or the manner in which they have been employed, were to determine this cause, I should at once abandon it as a hopeless prosecution.

It is unnecessary to vindicate the character of the Messrs. Wilsons; for the defendant's counsel had acquitted them of all participation in the subornation of Sherman.

The whole defence is placed on the want of malice in a publication admitted to be false. It is said, however, that the publication was made under a conviction of its truth. Be it so—and where is the justification of the defendant? That it was made under such circumstances, would, undoubtedly, be proper for the consideration of the court in measuring a punishment for the offence: but that it could ever be received by a jury, in complete exculpation of the accused, is a doctrine which would be as pernicious in its consequences as it is unsupported by authority.

Previous to the case of Croswell, (3 Johns. Cas.) the truth itself could not be admitted to justify the defendant; our statute has admitted it only when published with good motives. But neither our legislature nor our courts have ever said, that a falsehood, vitally affecting the character of another, could be published with impunity. Can it be necessary to illustrate so plain and safe a principle? A disappointed suitor says of the judge who has decided against him, that "he has received a bribe for his decision." He tells his story with an air of sincerity, and relates circumstances which never existed, from which such a conclusion might be drawn. The printer, honestly believing his story, and with the best motive that could actuate any human being, that of bringing a guilty man to justice, publishes the charge. He is indicted for the libel—he offers these facts in evidence, and demands his acquittal.

Such a law of libel would be a senseless mockery of justice. Private character would be every where assailed, and the public peace continually disturbed.

But, if malice was not the legal inference from a false and defamatory publication like the present, what is the positive evidence of its existence? In the very opening of the publication she declares revenge to be her object. She assails the complainants in their private as well as in their professional character.

Previous to this publication, she meditated an attack of a very different nature. She appeared before the grand jury, and

charged the Messrs. Wilsons with conspiring, with others, to suborn Sherman. Finding that her accusation was regarded by that tribunal as utterly groundless, she resorted to this publication, as a means of gratifying the passion with which she avows she was governed. If "any publication, exposing another to obloquy or ridicule, and made with a mischievous and malicious intent," be a just definition of a libel, then is the defendant, in this case, guilty.

It has been insinuated by counsel, that the Messrs. Wilsons expected something more than the ordinary remuneration for their services: a deed of conveyance has been spoken of; but where is the proof of its existence? And a reason stated is, that their employer was too poor to have made any other terms with them.

I might now retort on the gentleman, and inquire how he expected remuneration for his services; for, at the commencement of this unhappy controversy, his client was also poor.

Mr. Emmet. I can explain this to the jury.

Price. The gentleman need not; for I shall concede to him, in as full a measure as he can wish, that he was actuated, in his retainer and management of this business, by motives purely benevolent. I only ask him to have the charity to believe, that others might be actuated by motives quite as laudable.

On no occasion have I ever witnessed more ample testimonials of character than those produced by the complainants before you. The governor of our state has, in the most unqualified manner, declared that the character of George Wilson is unquestionable. Mr. Ferguson, the former mayor, Mr. Hoffman, the former recorder, under whom, as well as the governor, while mayor, Mr. Wilson practised for a number of years, have concurred in bestowing upon his private and professional character their entire approbation.

It has been said, however, that character is not the object of your inquiry, and that your verdict must be rendered without regard to the situation or feelings of the parties. If so, why did the gentleman press into his service the maternal fondness of his client? Why his bitter reproof of the unjust aspersions cast upon her character?

It is not to be disguised, even by the eloquence of that gentleman, that in this court, and in a case of this description, though the people stand upon the record as the accusing party, yet, in effect, the rights and feelings of the accuser, as well as of the accused, are as much involved, as they would be in a civil suit for the same libel.

The counsel who last addressed you, has made an appeal in behalf of a mother and her female children. I witnessed the effect it produced on you. If such considerations are to be permitted to influence a jury, I can tell you, with more truth than eloquence, that the complainants have wives and children anxiously waiting the result of this trial—that they also have an aged father,* proverbial for his integrity and learning, expecting that the care with which he has watched them through life, will be rewarded by a verdict which, in the language of the testimony, shall place their characters beyond suspicion.

Gardenier, also, summed up the case to the jury.

The Mayor, in the commencement of his charge to the jury, said, that he had hoped that this case would not have occupied so much of their time as it had. The object of the court had been, to shorten the investigation as much as possible; and it was to be wished that the offer of a compromise tendered by the prosecutors had been accepted. The court saw no reason why this offer had been rejected. The parties, however, for reasons of their own, into which it is not necessary to inquire, had thought proper to throw the burden of deciding the case on the court and jury.

Generally speaking, a leading inquiry in cases of libel is, whether the publication is, or is not, true? But this is not the only or correct criterion by which a jury is to determine such cases. A publication, true in every part, may yet, from its peculiar nature, be a libel. To ridicule the im-

* The gentleman alluded to by the counsel, has been a professor of the languages, and of Grecian and Roman antiquities, in Columbia College, for about thirty years.

perfections or deformities of an individual, which in fact exist, is libellous, because originating from a mischievous or malicious intention; and, on the other hand, a publication may be false, and yet not a libel. A printer, for instance, may find a publication in another paper, and, having sufficient reasons for believing it true, give it further publicity with pure and innocent intentions. It may turn out that the publication is libellous, and, on inquiry, may be found untrue; and, yet, we cannot say that the printer who republished it ought to be punished criminally.

Therefore, truth or falsehood cannot be the only criterion by which to determine, whether a publication is, or is not, a libel: but the principle or rule, in such cases, by which the decision of a jury is to be governed, depends on the intention or motive with which a publication is made.

In the first instance, a publication containing matter injurious to another, is deemed to be libellous; and, therefore, on this occasion, the counsel for the prosecution, after reading the publication, rested the case. The burden of proof was then cast on the defendant, on whom it was incumbent to show the truth of the matter alleged, or to explain the motives by which she was actuated. She has entered into the proof of a number of circumstances for both these purposes; and it will rest with you to decide, whether they are sufficient to justify her conduct, or the motives upon which she acted.

There appear to be, in this publication, two principal charges alleged against Mr. George Wilson: 1st, That he had endeavoured, on various occasions, to injure her character: and, 2d, That he was either engaged in a conspiracy, with others, to suborn Isaac Sherman to commit perjury, on a former trial, for the purpose of invalidating the testimony of a Mrs. Cannon, a material witness for the defendant, or, that he was privy to the attempt, on the part of Matthew Codd, for that purpose. With regard to the first charge, some testimony has been produced by the defendant, which goes to show that her character had been assailed by Mr. Wilson, and that she had reason to repel or resent the injury.

But the most material charge in the indictment, and, indeed, that principally relied on, is, the charge of subornation. It will be readily admitted, that this is one of the most serious nature, especially against a professional man. It ought not, therefore, to have been made but on sufficient grounds; and a party who will undertake to make such a charge from idle rumour, surmise or conjecture, should it prove unfounded, ought to be responsible for the consequences.

It is urged, on behalf of the defendant, that, from the information she had received, she had good reason to believe the matter to be true upon which the insinuation of this charge in the publication was founded; and it is particularly urged that, as all the communications from Codd to Sherman took place in the office of Wilson, who was the counsel in the case, the defendant had the strongest reason for believing that he must have been cognizant of, or privy to, the attempt to suborn Sherman. This was a circumstance, and nothing more; and, unless supported by other evidence, was not sufficient, in the opinion of the court, to justify the charge; and we think it now appears that he was not present at any of those communications. But it is not the business of the court to express a decided opinion on matters of fact; and the evidence on this point must, therefore, be submitted to you. I think, however, we ought to say, that she had no right to make so serious a charge against an individual on slight grounds; nor ought she to be permitted to excuse herself beyond the information she actually received and had reason to believe was correct.

Should you believe that she made this charge on trivial grounds, or such as were not, under the circumstances in which she was placed, entitled to her credit, or that she went beyond the information she actually received, I think she ought to be held answerable for the consequences, and liable to this prosecution. But if she possessed the information from sources which appeared to be entitled to confidence, and was actuated by fair motives, in the defence of her own conduct and character, she then could not be considered as being influenced by unjust or malicious intentions towards the prosecutors.

On the whole, this is a case peculiarly

depending on the question of *intention*; of which you are to judge from all the facts and circumstances. We have avoided going into a particular examination of the evidence, because we think it unnecessary, and, at this late hour, could hardly be endured. If you believe the charges contained in this publication originated from improper or malicious intentions towards the prosecutors, you ought to find the defendant guilty: but if no malice existed on her part, and you believe that her object was to vindicate her own conduct or character, she ought to be acquitted.

The jury retired at about half after three o'clock in the morning, and, in about two hours, returned a verdict for the defendant.

The defendant attended through the whole course of the trial; and, on the ground stated by Mr. Emmet, in his argument, rejected several offers of accommodation made by the counsel for the prosecution, especially towards the conclusion of the trial.

The same principle upon which this case was submitted to the jury, was laid down by this court in the case of Coleman, (Ante, p. 49.)

As there appears to be a diversity of opinion on this subject, and some have even questioned the correctness of the rule, we shall recur to a few leading principles, which may aid the conception of our readers, and lead them to reflect on a matter not generally understood. We shall then briefly apply these principles to this decision.

Throughout the criminal code, the *quo animo*, or intent, is the criterion by which we are to determine whether the act committed was a crime. Did the prisoner *intend* to steal? Did he *know* the bill was a counterfeit? are questions always left to the jury, to be deduced from all the facts and circumstances in the case.

Now, this term *intent*, as we conceive, in the law, is synonymous with *motive*; which means, that principle in the mind causing action. In strictness, however, there is a difference: the motive precedes the intent. We may have a strong motive to kill; but religious obligations, or the fear of punishment, may prevent our intending to commit that act. Legislators, however, are not always metaphysicians.

According to the English law, in a criminal prosecution for a libel, the defendant is not allowed to give the truth in evidence; because, to publish the truth, *in some cases*, is libellous. The severity of this rule has been condemned by some of the most enlightened civilians; not because the truth is a justification *in every case* of libel, but because, in many cases, to allow the truth to be given in evidence would be, *so far*, helping the defence. In most cases, by showing the truth, the defendant could refer to the jury, from all the facts, the *quo animo*, or intent, which actuated him in making the publication.

By a statute of our state, (2 Vol. R. L. p. 553.) in a criminal prosecution for a libel, the truth is allowed to be given in evidence; "provided that such evidence shall not be a justification, unless, on the trial, it shall further be made satisfactorily to appear, that the matter charged as libellous was published with good motives, and for justifiable ends." This proviso, no doubt, was added because some publications containing the truth are libellous.

In the case of Croswell, tried about the time of passing that act, and reported in the third volume of Johnson's Cases, the definition of a libel is laid down by Hamilton, a man of the most comprehensive mind and enlarged conceptions that ever adorned the profession. "A libel," he said, "is a censorious or ridiculing writing, picture or sign, made with a *mischievous* or *malicious intent*, towards government, magistrates, or individuals." This definition, in which the term *false*, or *falsehood*, doth not occur, has been adopted by our supreme court in several adjudged cases. In fact, the falsehood of a publication is a circumstance, merely, of malice; and not essential to make out the offence of a libel.

Having premised thus much, we are ready to apply these principles in testing the correctness of this decision. In the first place, however, we shall take for granted, that if a professional man, sworn to demean himself honestly, and standing forth for employment from the public, either incite another to commit perjury, or is privy to an attempt of that nature, he ought to be exposed, that the public may be put on their guard. It is just—it is laudable, to publish his delinquency.

Now, suppose an individual has heard a relation of facts from others, fortified even by the oath of a witness in open court, producing an entire conviction in his or her mind that such professional man has been privy to an attempt to suborn, and, under that belief, publishes the fact. Should it turn out to be true, in every part, the author, as we have seen, would not be guilty of a libel, because it was right to put the public on their guard; and this is presumed to be the intent or motive of making the publication. But should it turn out to be untrue, can this alter the complexion of the case in a *criminal* point of view? Is the *quo animo* or *intent* altered from the circumstance that no such privity existed? In truth, could it be said, in the language of the definition, that the defendant made the publication "with a *mischievous* or *malicious* intent," when, had the facts been true upon which the publication was founded, such intent would have been wanting? If so, then the original intent could be altered by a circumstance not in the mind of the party, over which he had no control, and concerning which he had no cognizance; which is absurd.

Therefore, the *intent*, or *motive*, in a criminal case for a libel, affords the criterion to the jury, in determining the question of libel or no libel; and may be truly said to govern the whole case. To this *intent*, the jury must look; and from *this*, judge and determine. Nor has the court any right to charge the jury, that if they believe the publication false, they ought to convict, &c.

But it is said that the party, against whom the publication was made, has suffered a serious injury from the falsehood of the author, who made the statement at his own peril. Granted: but it does not follow that *the people* require satisfaction, because an individual has been aggrieved by one who, in the eye of the law, *intended* him no injury. As between the *libeller* and the *libelled*, no doubt the reason applies with full force; but not as between *the people* and the *publisher*. The fact is, that in the class of cases above pointed out, in which the publication of the truth is laudable, the defendant, in a *civil action*, must prove the truth of the publication; otherwise he is responsible to the party in damages, proportionate to the injury sustained. But, in another class of cases, in which it is not just to publish the truth, as in holding up the personal imperfections or deformities of an individual in a ridiculous light, the truth of the matter, either in a civil or criminal prosecution, could be no justification. The reason is obvious: the *motive*, or *intent*, in making the publication, *ex necessitate rei*, must have been *mischievous* or *malicious*; and, therefore, whether the publication be *true* or *false*, is wholly immaterial.

SUMMARY.

(FORGERY AND COUNTERFEITING.)

Gabriel Conklin, was indicted, tried, and found guilty of having in possession, with an intention of uttering, a $5 bill on the Mechanics' Bank, in the city of New-York. On the 29th of November last, he was arrested by Jacob Hays, in Church, near Walker-street; and, in addition to the bill laid in the indictment, he found in possession of the prisoner $15, coined of base metal. On his arrest, he said, "I am done over!"

The testimony relative to the false dollars, was produced by the district attorney to show the *scienter*; and, for the same purpose, John Patchen, who kept a whale for exhibition in Broadway, proved that the prisoner, in company with one Paul Vandervoort, came under a pretence of seeing the show, and Vandervoort passed a $5 counterfeit bill, on the Ontario Bank, to the witness: and when he was about ascertaining whether the bill was good, the prisoner ran off.

Vandervoort was admitted as an approver, and showed that the prisoner gave him the bill to pass.

Conklin was sentenced to the State Prison for life.

Timothy Sands, a mulatto, was indicted, tried, and found guilty of uttering, knowing it to be false, a $5 bill on the same bank, and of the same impression as that charged against the last-named prisoner.

The bill laid in the indictment was passed to Abraham Dally, jun.; and, for the purpose of establishing the *scienter*, Maxwell introduced Peter Anderson, and Charles N. Burnet, who testified that the prisoner passed to each of them a $5

counterfeit bill of the same description, and on the same bank, for articles of inconsiderable value.

He was sentenced to the State Prison seven years.

(GRAND LARCENY.)

Ernest Sungum, was indicted, tried, and found guilty of stealing the property of Christopher Miller, and sentenced to the State Prison seven years.

Charles Moon, and *James Duffy*, indicted with *Franklin De Le Roy*, were indicted, tried, and found guilty of stealing a chest of hyson tea, of the value of $50, the property of John G. Cook.

It appeared in evidence, that on the night of the 2d of December instant, the prisoners, in company with Henry Cropsey, broke open the store, and while in the act of taking away the goods, were seized by the police officers, to whom Cropsey had given information.

It further appeared, that this Cropsey, who had lately been liberated from the State Prison, where he had been sentenced forty years for passing counterfeit money, instigated these young men to commit this felony. Moon, also, had lately been discharged from the State Prison.

The court ordered Cropsey to be committed, on the ground that, having been employed by the police to give information concerning felonies about to be committed, he had been engaged in instigating them himself.

The sentences of Moon and Duffy were suspended.

John B. Langdon, was convicted of this offence, in stealing the property of Benjamin Hughes, and the sentence was suspended.

Thomas Curly's (see the last summary) sentence was further suspended.

(PETIT LARCENY.)

John Brown, *Stephen Lewis*, *Peter Wilson*, *John Terhune*, *James M'Cready*, *Nancy Hammond*, *Andrew Wilson*, *Samuel Danforth*, *John M'Kane*, *John Lewis*, *Lewis Shelter*, *James H. Prouty*, *Walter Moore*, *William Johnson*, *William Amos*, *Joshua Ackerly*, *Patrick Limbert*, and *Daniel Mowry*, were each convicted of this offence; and the three first-named were sentenced to the Penitentiary three years each, the next for two years, the five following for eighteen months each, the next for one year, the four following for six months each, and the remainder for shorter periods.

(DISORDERLY HOUSES.)

Thomas Phelan, *William Kelly*, *Daniel Dougherty*, and *James Hamilton*, were each indicted, tried, and found guilty of this offence, in keeping their groceries (in Bancker-street) open at unseasonable hours, and on the Sabbath, for the reception and resort of disorderly persons, who were frequently guilty of riotous conduct.

Phelan was sentenced to the Penitentiary thirty days, and to pay a fine of $250; the two next to imprisonment for the same period, and to pay $100 each; and the other to pay $50, and give security in $250, for his good behaviour one year.

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though this was sufficient evidence of a marriage *de facto* of the person by the name of S. and, therefore, that collateral evidence, to identify such person, might be given, yet that the prosecutor should be precluded from establishing the second marriage, by cohabitation, or otherwise, without first proving that S. the prisoner, was the identical person so married by K. 111

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An engraver, who had been employed by two young men, to make an engraving on copper, of the word and number *FIVE*, in imitation of that word and figure in a bank bill, and evidently calculated to place on the left hand side of other bank bills of a less denomination, to alter them to a greater, and who in his testimony swears, that he made such engraving, and received his pay, but had no suspicion of the object to which such plate was to be applied, until the paper was brought for him to print parts of bills, will not be believed, *ibid.*

Such engravers should beware lest they get themselves into difficulty, *ibid.*

Quære—Should a forgery be afterwards committed, by altering a bill from a less to a greater denomination, would not such miscreant engraver be a *particeps criminis?* *ibid.*

Examination.

That which in an examination appears to be a mere excuse, framed by the defendant for his conduct in a fraudulent transaction, can never support a material allegation in an indictment, which requires positive proof, 54

The written examination of a witness, in a criminal prosecution, taken before a magistrate, cannot be read in evidence to fortify the oral testimony of such witness, without producing the magistrate before whom such examination was taken, 61

Execution.

Where a constable or marshal prosecutes for a personal injury committed on him while in the execution of the duties of his office, he should produce, on the trial, the process under which he acted; otherwise the result may be that he himself was the trespasser, 165

F

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—cannot, with safety, place confidence in each other, 56

Foreclosure of a Mortgage.

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See Computation of Time.

Foremen of Grand Juries.

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John P. Anthony, 25
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Forgery and Counterfeiting.

To pass a false and forged check, payable in notes current at the several banks in the city of New-York, is not a forgery at common law, or within the statute against forgery and counterfeiting, 46
Where two, in concert, pass a counterfeit bill, and endeavour to escape, and in their several examinations give contradictory and unsatisfactory accounts of such possession, these are strong circumstances of guilt, 47
The forgery of an order for the delivery of goods, against a person who, by reason of a legal disability, would not have been liable on such order, had it in truth been genuine, is within the statute, 54
A man who is engaged with others in passing counterfeit money, though arrested by an artifice, is not, therefore, the less guilty, 56
—of a bond on the Earl of Chesterfield, 72, n.
To have a counterfeit bill in possession, professedly with an intention of selling it as counterfeit, is contrary to the express provisions of the statute. (1 Vol. N. R. L. p. 406. s. IX.) 84
In such case, the intention is, *to permit, cause*, or *procure* such bill to be uttered and passed. (Vide 1 Vol. p. 109.) *ibid.*
Concealment, or an attempt to conceal false money, is a strong circumstance of guilt against a prisoner, on the traverse of an indictment against him, for having counterfeit money in his possession, with an intention of passing it, 87
An instrument in writing, directing or requesting the payment of a specific sum in the *bills of an individual*, is neither an order for the payment of money, nor delivery of goods, within the statute. (1 Vol. R. L. p. 405. s. 1.) 155
Such bills not the subject of forgery under the statute, *ibid.*

Fraud.

—and felony conjoined, 54
—approximating to felony, 157

G

Gambling.

—in a grocery—the keeper indictable, 53
A grocery licensed in the city of New-York is an inn, or tavern, and to keep a shuffle board, and permit persons to play in such grocery, is "an offence against the people of this state by statute." (1 Vol. N. R. L. p. 178. s. 8.) *ibid.*

Grand Larceny.

A grand larceny cannot be divided into several distinct larcenies: and where a prisoner stole several articles, at the same time, the property of different persons, and several indictments were found by the grand jury, the court directed the public prosecutor to select one of the indictments for trial, and to enter a *nolle prosequi* on the others, 37
Where two are indicted jointly, and, on the trial, some evidence is introduced on behalf of the prosecution, showing that the prisoners were aiding, abetting, and assisting in the commission of a felony, the court will not interfere in advising the jury to acquit one of the pri-

soners, that he may be sworn as a witness in favour of the other, 38

Where a prisoner steals an article in another state, and brings it into the city of New-York, an indictment cannot be supported for the offence in this court: but where it is rendered in the least doubtful, whether such taking was in such state or *on the high seas*, the jury, in a clear case of guilt, disregarding technical niceties, will find the prisoner guilty, 45

Where an hostler, having charge of a horse, is sent by the owner's agent with the horse to a man at a distance, who had entered into a negotiation for the purchase of the horse with the agent, and such hostler, having no authority to sell the horse or receive the money, nevertheless receives a check, draws the money, and converts it to his own use, it was left to the jury to judge, from all the circumstances in the case, whether, at the time the prisoner took such horse from the agent, he intended to convert the avails thereof to his own use, 157

It seems that such fraudulent intent must exist in the mind at the time of taking the horse, to render such taking felonious; nor will any subsequent evil intent render the taking felonious, *ibid.*

H

Homicide—excusable.

In a sudden affray between V., a stout, athletic man, and S., much his inferior in strength, in which it appeared that V. was rather the aggressor, after a struggle between them on the ground, both rose, and a mob having collected, a heavy stone is cast at V. which fractured his skull, and ultimately deprived him of life. That such stone was cast by S., is not otherwise proved on the trial than by his examination taken in the police, which states that "after S. had cleared himself, he picked up a stone, and told V., that if he did not let S. alone, he would hurt him: V. came at S. again, and he then threw the stone and knocked him down." On the traverse of an indictment against S. for manslaughter, it was held that this was excusable homicide, 164

Where in such case it is proved by a skilful surgeon, that after the accident, he performed the operation of trepanning on V., who had every rational prospect of recovering, but that in divers fits of delirium he tore open his wounds, by which death was induced, *but that such delirium was the result of such blow on the head*, it was held, that it was well laid in the indictment, and proved that *the death was occasioned by such blow*, 164

Husband and Wife.

Where the husband is convicted of an outrageous assault and battery committed on the wife, whom he has left in a helpless situation, destitute of the means of support, the court will suspend his sentence, to ascertain whether a reconciliation will take place; and if it does not, in a reasonable time, and the husband remains obstinate, the court will inflict such a fine as will bring him to a sense of his duty, 44

An attempt by the husband to poison his wife, 156

In a criminal prosecution against the husband for inciting a third person to administer a certain deadly poison to his wife, with intent to murder her, it was held, that the wife was a competent witness on behalf of the prosecution, *ibid.*

Husbands—the law requires fidelity on your part, as well as on that of your wives, 170

I

Indecency.

—towards infant females, by a schoolmaster, explained—indirectly, 147, 148

Punishment inflicted, 149

Insanity.

However horrid and unnatural a crime committed by a prisoner may be, it is not to be inferred from the nature of the crime, that its commission was the result of insanity; especially in a case whose circumstances combined, show that the prisoner was actuated, in committing the crime, by revenge, or through despair, 85

Insurance.

—its general principles explained, 1

In an action brought on a policy of insurance against loss or damage by fire, the plaintiff is not entitled to recover, should it appear that such fire was occasioned through the agency, or by the procurement of the plaintiff, 1

On the trial of such action, the defendants will be allowed to prove encumbrances by mortgages, on the property insured, previous to its insurance, either as an evidence of the real value, or of fraud, *ibid.*

It seems, however, that exemplifications or sworn copies of the registry of such mortgage, taken from the office of the Clerk of a county in a foreign state, will not be received in evidence for the purpose of proving such encumbrances, *ibid.*

Glaring frauds practised against insurance companies, *ibid.* 61. 131

J

Jurisdiction.

Where a felony is committed within the city of New-York, and the prisoner is pursued into the state of New-Jersey, and apprehended without legal authority, and brought back, and is then arrested by virtue of a warrant issuing from the police, it was held, on the traverse of an indictment against him for the offence, that the alleged violation of the sovereignty of New-Jersey would not be regarded by the court, who would not look beyond the arrest by the police, 119

It seems, that, in such case, any alleged violation of territorial rights, is a matter resting between the executive of the respective states, with which the court will not interfere, *ibid.*

—of the circuit court of the United States, in a criminal case, discussed, 144, 145, 146

It seems, that congress has no right, under the constitution of the United States, to pass an act, assigning the justices of the supreme court of the United States, or any of the said justices, to hold a circuit or any inferior court. The appointment of judges, for such circuits, is vested exclusively in the president, and two thirds of the senate: but the supreme court of the United States having acquiesced with the act of congress assigning such duties to the justices thereof, the court was bound to decide against an objection raised to its jurisdiction, 131. 146

Jury de Medietate Linguæ.

—should consist of such aliens as understand our language, 113

K

Kidnapping.

On the traverse of an indictment under the 29th section of the "Act concerning Slaves and Servants," it was held, that forcibly confining, or inveigling, or kidnapping *any person of colour*, with intent to send him out of this state against his will, or the conspiring with any other person or persons, or aiding, abetting, assisting, hiring, commanding or procuring any other person to commit the said offence, whether such *person of colour was a slave or servant, or not*—is an offence against, and punishable by the penalties of the statute, 120

It seems, that the thirteenth section, above mentioned, is particularly applicable to cases where the owner or possessor of slaves or servants, residing in this state, exports, or attempts to export, such slave or servant out of this state, not confining himself to the exceptions in other parts of the statute, *ibid.*

Where in such case it appears that a person, offered as a witness on behalf of the prosecution, is a slave, but alleged to be free by reason of an attempt to export him out of the state, he cannot give testimony until it is shown, by extrinsic evidence, that he has become free by reason of such attempt; nor will the public prosecutor be permitted to introduce the former conviction of a person indicted for aiding, abetting, assisting, &c. the defendant on trial and another, to export such witness out of the state, *ibid.*

—carried to an alarming height, 128

L

Libel.

—on a female, 41

To read a scurrilous letter to others, im-

peaching the chastity of a woman, is evidence of the publication of a libel, and the repetition of matters contained in such letter, whether before or after action brought, may be given in evidence to show the malicious intent of the original publication, 41

Charge of the court, and verdict, 42, 43

Malice is essential to support a criminal prosecution for a libel; and, although the implication of malice is, *prima facie*, supposed from the publication of libellous matter, yet the defendant may rebut such implication, by showing that such publication was not made maliciously, 49. 171

Where a publication in a public newspaper, upon which a prosecution for a libel was founded, contained the charges of *kidnapping* and *cruelty*, against the prosecutor, and a postscript was added, retracting the first, but reiterating the second charge, and the defendant, on the trial, proved certain acts committed by the prosecutor, though not precisely as laid in the publication, but sufficient to support the charge of cruelty in general, it was held that the whole must be taken together, the latter as doing away the former; and that, as to the charge of cruelty, should the jury believe the facts detailed in the testimony sufficient to support that charge, it would be their duty to acquit the defendant, *ibid.*

That a libel published against the clerk of a court of general sessions of the peace, was written by the district attorney of that court, and delivered to the defendant for publication, who is the editor of a public newspaper—is admissible in evidence, to show the want of malice, 90

When the publication complained of as a libel, in substance charges the prosecutor with having received divers sums of money, in divers instances, which neither the law, nor *the rules or the practice of the court*, authorized, and the defendant in such prosecution, to prove the truth of such charge, in justification produces a number of witnesses, who swear to divers sums paid by them to the prosecutor as clerk, alleged to be illegal, it seems that the minutes of the court kept by the prosecutor, as clerk, will be received as only *prima facie* evidence of the facts relating to such charges: the orders of the court contained in such minutes, and bills of costs sanctioned by the judges of the court, containing charges which such clerk was in the habit of making, may be read, for the purpose of repelling such charges in the libel as relate to the *rules and practice* of such court, but not to show such charges were legal, *ibid.*

Where a painter of *professed* eminence requested a citizen to have his portrait drawn, by reason of some peculiarity discovered by the painter, as he alleged, in the physiognomy of such citizen, who consents, and the painter draws an imperfect likeness, and exhibits it in a public place, at which the citizen is displeased, alleging that it is not his likeness, but, nevertheless, offers to pay such painter the full charge of such painting, which he first refuses to receive, considering his professional skill decried, but, afterwards, demands the money, which the other refuses to pay, and an action is brought by the painter to recover the price of the painting, who fails; and afterward an execution in favour of such citizen, for the costs of defending such suit, is issued, by virtue of which the same picture is levied on by the sheriff, and receipted by him, and left with the painter until the day of sale, and, in the mean time, the artist paints on the head of such picture a pair of Ass's ears, on the day of sale causes a ludicrous advertisement of the sale of such picture to be inserted in a public newspaper, and endeavours to incite the auctioneer to put such picture in a conspicuous place in the auction room to be seen by the people, it was held that such conduct was sufficient to fix on such painter the offence of *publishing* a libel, 113

It is no justification for such painter, in publishing such libel, that such citizen, after he refused to receive, but had offered to pay for the picture, gave a written certificate to the painter authorizing him to dispose of it as he pleased, *ibid.*

In such case, to show the want of malice, the painter will be permitted to show that, *at the point of time* in which he was painting the Ass's ears on the pic-

ture, he represented to a by-stander, that it was his intention to transfer such picture into a Midas, *ibid.*

Where the *gravamen* in the indictment consisted in divers insinuations, conveying the idea that the prosecutor had conspired, with others, to incite one who had been produced as a witness on a former trial to commit perjury, and that the prosecutor was privy to certain secret conferences held between one of the conspirators, his client, and such witness, at the office of the prosecutor, though on the traverse of such indictment such insinuations may be proved unfounded, by the testimony on behalf of the prosecution, yet, should the jury believe, from the testimony on behalf of the defendant, and from all the circumstances in the case, that she had strong grounds for believing the information upon which such insinuations are founded, to be true, and that she was actuated in making the publication, by a desire of vindicating her own character from certain injurious aspersions, of which the prosecutor was the author, the jury may acquit, 171

In such case, however, insinuations conveying so serious a charge, published against an individual, ought not to be founded on idle rumour, conjecture, or surmise; but the grounds should be such as to leave no rational doubt in the mind of the publisher, *ibid.*

The *quo animo*, or *intent*, with which a publication is made, rather than its *truth* or *falsehood*, is the correct criterion by which the jury is to determine whether such publication is a libel: if no *malicious intent* existed, *no libel* was published, 190

Remarks in support of the principle upon which this case was submitted to the jury, *ibid.*

M

Malicious Mischief.

To cast spirits of vitriol, aqua fortis, or any other powerful acid substance, on the person or clothes of another, wantonly and maliciously, is, *at least*, *an infamous crime*—and *ought to be made* felony by statute, No. 2, 5

Midas.

Substance of the fable, 113 n.

Manumission.

Q., the master of a slave in the state of New-Jersey, executed and gave to A., the slave, a written instrument, stating, that A. was the servant of Q., and had the liberty of Q. to work for himself, A., in the said state, and to hire himself to any one willing to employ him, provided that A. paid Q. $64 a year, for four years; stating further, that A. had served Q. faithfully five years as a slave. It was held that this instrument was a private contract between Q. and A., independent of any statute law relating to slaves, and operated as a conditional manumission of A., who, on the payment or tender of the sum to be paid during the four years, at any time within the term, became from that time a free man, 1

—society in New-York, when established, and its objects, 127, 128

The object of societies, for that purpose, in general, *ibid.*

Murder.

It is murder for a man, with malice aforethought, to discharge a loaded musket at another, by means of which death ensues, though the deceased was, at the time, committing a trespass on the prisoner, 77

Where, however, in such case, there appeared to have been a violent quarrel, for a number of years, and frequent lawsuits between the prisoner and the deceased, neighbours to each other, in which the latter appeared, rather, to be the aggressor; and the deceased is found by the prisoner, before daylight, in his enclosure, committing a trespass on him, and the circumstances are sufficient to induce the belief that the prisoner, when he left his house with a gun, or other deadly weapon, had no particular malice towards the deceased, and in discharging the gun during, or after a violent struggle, was actuated, rather by a momentary phrenzy, than by malice aforethought; the jury, judging of the law for themselves, acquitted the prisoner, *ibid.*

N

New Trial.

—granted in a case of grand larceny, where the jury did not agree, 33

Authorities on that subject, collected, *ibid.*
Should the jurors, in a case of grand larceny, not be able to agree, and after staying out a reasonable time, and returning into court, are discharged, the prisoner may be tried again, for the same offence, by another jury, *ibid.*
A certificate of several jurors who pronounced a prisoner guilty, on a charge of forgery, with an affidavit of the prisoner, stating, that since the trial, he had discovered testimony by which he could impeach the testimony of a witness, on the trial, the introduction of whom, as a witness, he, the prisoner, did not previously know, will not be sufficient to induce the court to grant a new trial, 73

Notice to the District Attorney.

Quære—Whether a notice from the defendant to the district attorney, to produce, on the trial, a paper, supposed to be in the possession of the prosecutor, who has received a similar notice, but denies the existence of such paper, will be sufficient to authorize the defendant to prove the contents of such paper by parol testimony? 171

Nuisance.

To carry on and continue any particular branch of business, from which manifest danger, by fire, is reasonably apprehended by divers inhabitants, in a compact part of the city, is a nuisance at common law, 46
Where the decision, however, in a particular case, may affect the interests of many citizens, exercising a particular branch of business, in such a city, the jury, under the peculiar circumstances of the case, will judge of the law for themselves, *ibid.*
A lawful business, in a populous city, ought so to be exercised, that the least possible annoyance or inconvenience should arise to the prejudice of the citizens, 161
On the traverse of an indictment for erecting and continuing a certain distillery for distilling and rectifying spirits, in which there were certain furnaces which emitted large quantities of smoke, to the great annoyance of the people, which allegation appeared to be supported, and it further appeared that the chimney conveying such smoke was low, this was held a common nuisance, 161
Where divers persons, in a populous city, living adjacent to a distillery from which issued noisome smells and vapours, were thereby much incommoded, and the air was rendered uncomfortable, though such smells and vapours are not, in their nature, unhealthy, it was held that such distillery was not, therefore, the less a nuisance, *ibid.*
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Authorities collected relating to nuisances, 163

O

Officers.

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P

Prudence.

Citizens—be careful to close and secure your entries, 37
A merchant who makes a contract with a stranger, to sell him a quantity of goods, for cash, on delivery, ought not to suffer him to take away the goods before paying the money, 76
It is a matter of prudence for travellers, when retiring to rest in a public house, to put their money, watch, or other valuable effects, under their pillow, or in their trunk, 119, n.
Innkeepers should be cautious of putting a stranger to lodge in the same room with other guests, *ibid.*

R

Recognisance.

—explained, 103, 104, 108
—respite defined, *ibid.*
—estreat—what, 104 n.
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Ridicule.

—the test of truth, 113. 118
—principles laid down by Lord Kaimes applied, *ibid.*

Riot.

—in a church, 25
Where a great number of persons assemble in a meeting-house, during hours in

which divine worship is generally performed in other places, and riot and disorder takes place in such house, it was held, that no person or persons then present, could be found guilty of such riot, without proof that he or they took an active part in such riot, either by doing some riotous act, or by aiding, abetting, or assisting others to perform such act, *ibid.*

To make a man a rioter, it must be shown, that he had some concern in a riot; and it does not follow, because a man is present where a riot is committed by, or among a multitude, that he is guilty of a riot, *ibid.*

To constitute a riot, there must be an assemblage of two or more for an unlawful purpose, 88

Robbery.

On the traverse of an indictment for a robbery, where the principal witness, on behalf of the prosecution, appears before the court in a suspicious light, equivocates, and is contradicted by other witnesses, it is the safer course for the jury to acquit the prisoner, No. 2, 7

Force or violence, in depriving a man of his property, is an essential ingredient to constitute robbery, *ibid.*

Honest, prudent people, need not fear highway robbery in the city of New-York, *ibid.*

It seems that in an indictment, a count for highway robbery includes, within itself, grand or petit larceny, or assault and battery, *ibid.*

Strong circumstances making against two prisoners tried for this offence, 150

—case in England, 151

S

Scienter.

Where a man is indicted for having in his possession, with an intention of passing, a counterfeit bill, the public prosecutor, for the purpose of showing such intention, will be permitted to prove, that at the time the prisoner was arrested by the police officers, he was engaged, with others, in coining false money, 57

It seems, however, that the possession of a single counterfeit bill, unaccompanied by any circumstances tending to show the intention of passing it, except being engaged in a distinct species of crime, will be insufficient to produce a conviction, *ibid.*

Where a prisoner was indicted for having a single bank bill in his possession, with an intention of passing it, and it appeared in evidence that he had received it for the purpose of returning it to the person from whom it was said to have been received, and openly showed it as a bad bill, though it should further appear, that a large quantity of false money was found in his house, in the state of New-Jersey, and that he was largely concerned in the business of counterfeiting, it was held that the *scienter* was not sufficiently established to convict him, 73

That a large sum in counterfeit money was found in the trunk of a prisoner, not within the jurisdiction of the court, will be admitted in evidence as a circumstance to show the *scienter*, *ibid.*

Where an indictment, under the law of the United States, against sinking a ship at sea, was traversed, and the counts under the second section of the statute charged the offence to have been committed with intent or design to prejudice the "American Insurance Company," which company had insured $6,000 on the vessel; it was held that the public prosecutor, after showing that such sum was insured on the vessel, might further show that the sum of $46,000 was insured on the cargo by different insurance companies: it having been proved that such cargo was not put on board such vessel, 131

Seamen's Wages.

During the voyage of a letter of marque vessel belonging to the United States, from a port in France to New-York, on board of which the plaintiff shipped as a seaman, in France, the said vessel captured a prize, on board of which the plaintiff was put as one of the prize crew; which prize was recaptured by the enemy, and the plaintiff detained as a prisoner of war, until the peace. The vessel on board which he shipped, arrived in safety. It was held, in an action brought by the seaman, for his wages during the whole period of his de-

tention, that he was entitled to recover wages only up to the time of the arrival of the letter of marque in New-York, 59

Sinking a Ship at Sea.

Conspiracy to sink a ship, 61
—punishable with death, 131
On the traverse of an indictment, under the first and second sections of the Act of the United States, against sinking or destroying a vessel at sea, containing five counts under the first section, and eight counts under the other, it appeared, that the owner of the ship was on board at the time she was destroyed, and was instrumental in such destruction, for the purpose, and with the intent of defrauding divers companies of insurance, contrary to the provisions in the second section of the statute above recited: the prisoner was the captain on board, also engaged with the owner in such destruction; and, in the progress of the trial, a confession of the prisoner that he was the owner, in part, of the ship was proved. The jury, however, found him guilty under that class of counts in the indictment founded on the first section:—It was held, that the object of destroying the vessel being to defraud the insurers, and that object being known to the prisoner—that the destruction of the ship was *wilful and corrupt*; and that the consent or command of the owner to have her destroyed, could not justify the prisoner, 131

Slavery.

—founded in cruelty and injustice, 126
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—its evils and effects, *ibid.*
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Obstacles to abolition of slavery in the United States, 129
Appeal to the friends of humanity, *ib.* 130

Subornation.

It is not only wicked, but utterly unsafe, for a suitor, in a judicial proceeding, to attempt to pervert justice, by inducing others to commit perjury, 170

T

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—its influence over the human mind, 71

Trespass.

An indictment at common law, cannot be maintained for a mere trespass, No. 2, 6
Arguments for and against such prosecution, *ibid.* 7 n.

V

Verdict.

The jury, in rendering a verdict, declare the result of their conviction, from the evidence; they do not swear that the facts, upon which such result is founded, are true, 149

W

Witness.

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The jury will place no reliance on the testimony of a thief, unless strongly corroborated, 36
Capacity, rather than age, is the criterion for determining whether a child of tender years ought to be sworn as a witness; and where such witness was introduced, and was found, on examination, to possess sufficient intelligence, but did not understand the nature of an oath, nor the consequence of swearing false, it was held that the court might instruct such witness before administering the oath, 147
The testimony of a witness who appears before the jury, on behalf of the prosecution, in a suspicious or unfavourable light, will be strictly scrutinized, and sometimes discredited—especially in a capital case, 166
—should not be tampered with, 170
—offered $1,000 to swear false; discloses the offer on the trial, *ibid.* 176

Woman.

Where a young female stranger appears more unfortunate than guilty, the court will, after her acquittal by a jury, make arrangements to have her conveyed to her friends, 56
Youth and beauty excite pity towards a female, in an unfortunate situation; but jurors may be often mistaken in the object of their compassion, *ibid.*
—obtains a divorce from her husband, 170
—is indicted for a libel, 171
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END OF THE SECOND VOLUME.